Schuurman & Jordens

Tweede druk

2004

NEDERLANDSE WETGEVING

Europees Sociaal Handvest e.a.

74-V

Bewerkt door
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SCHUURMAN & JORDENS

Europees Sociaal Handvest e.a.

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Europees Sociaal Handvest

Turijn, 18 oktober 1961

Aanvullend Protocol

Straatsburg, 5 mei 1988

Europees Verdrag inzake sociale en medische bijstand

Parijs, 11 december 1953

Europees Verdrag inzake de rechtspositie van migrerende werknemers

Straatsburg, 24 november 1977

Tweede druk

bewerkt door

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KLUWER

2004

Deze 2e druk is bijgewerkt tot 15 mei 2004.

ISBN 90-13-01104-7
NUR 823-318

Hiermee is de 1e druk (verschenen als S&J-deel 74-II) vervallen.

VOORWOORD

De eerste druk van dit S&J-deel verscheen in 1984 als S&J-deel 74-II en was bewerkt door prof. mr. E.A. Alkema met medewerking van mr. H.E. Timmerman. In vergelijking met die druk beslaat het tot 74-V vernummerde S&J-deel thans alleen sociale verdragen van de Raad van Europa. Het Internationaal Verdrag inzake economische, sociale en culturele rechten van de VN en de Conventies van de Internationale arbeidsorganisatie zullen in een apart S&J-deel in de reeks van nr. 74 worden uitgebracht. Daarmee wordt dit S&J-deel de 'sociale pendant' van S&J-deel 74-I, dat betrekking heeft op het EVRM. Ter wille van het gemak van de gebruiker hebben de ratificatieoverzichten en de registers thans alleen betrekking op dit vernummerde S&J-deel.

Opzet van het commentaar

Het belangrijkste onderdeel van dit deel betreft het Europees Sociaal Handvest. Sinds de inwerkingtreding van het verdrag is het Handvest onderhevig geweest aan verschillende veranderingen. Er zijn drie protocollen tot stand gebracht en een herziene versie van het Europees Sociaal Handvest. Nederland heeft het Europees Sociaal Handvest, het Aanvullend Protocol en het Protocol tot wijziging van het Europees Sociaal Handvest geratificeerd. De niet-geratificeerde instrumenten, te weten het herziene Handvest en het Protocol tot invoering van een systeem voor collectieve klachten zijn in dit S&J-deel enkel in de authentieke Engelse taal opgenomen. Het Handvest en de twee geratificeerde protocollen zijn in de authentieke Engelse taal, alsmede in de officiële Nederlandse vertaling opgenomen. Tevens zijn deze laatste voorzien van commentaar.

Teneinde de gebruiker zo veel mogelijk van dienst te zijn, zijn veel verwijzingen opgenomen naar verschillende rechtsbronnen, zoals Nederlandse wetgeving, Europese richtlijnen en verordeningen, VN-verdragen, waarbij de nadruk ligt op het IVESCR, en conventies en aanbevelingen van de IAO. Tevens is in de tekst veelvuldig verwezen naar andere plaatsen in het S&J-deel. Zo is, indien van toepassing, bij bepalingen een verwijzing gemaakt naar het herziene ESH, waarbij de veranderingen kort benoemd worden.

Als gevolg van het bovenstaande is het commentaar op de verschillende bepalingen in beginsel als volgt opgebouwd:

Aantekeningen
Algemeen
Nederlandse wetgeving
Internationale context
Europese Unie
Raad van Europa
Verenigde Naties
Internationale Arbeidsorganisatie
Parlementaire behandeling
Toelichting
Europees Comité voor Sociale Rechten
Comité van Ministers
Regeringscomité
Parlementaire Vergadering
Jurisprudentie

De Conclusions

Sinds de eerste druk zijn de Conclusions van het Europees Comité voor Sociale Rechten (vroeger: Comité van Deskundigen) op een bijna exponentiële wijze toegenomen. Dit heeft geresulteerd in een, voor internationale instrumenten, vrij zeldzame nuance in de interpretatie van de afzonderlijke bepalingen. De Hoge Raad acht deze Conclusions 'gezaghebbend' (HR 30 mei 1986, NJ 1986, 688, NS). Zij nemen dan ook een belangrijke plaats in binnen het commentaar op de bepalingen.

De Conclusions zijn geselecteerd op relevantie voor de interpretatie van de bepalingen en voor de Nederlandse context. De Conclusions zijn dan ook in deze volgorde opgenomen. Conclusions met betrekking tot de specifieke implementatie in een ander land dan Nederland en die verwijzen naar Nederlandse of buitenlandse wetgeving zijn in het algemeen niet opgenomen. Conclusions betreffende de implementatie door Nederland zijn geselecteerd op actualiteit.

Voor de beoordeling van de Conclusions op haar juridische merites is het volgende van belang. De Conclusions zijn formeel-juridisch enkel van waarde indien deze gericht zijn aan een individueel land. De belangrijkste interpretaties van de bepalingen zijn echter vaak niet daar te vinden, maar in de verscheidene 'General Introductions' of 'General Observations',

waar regelmatig naar wordt verwezen in de individuele Conclusions. Waar een Conclusion aan een bepaald land is gewijd is dit duidelijk gemaakt in de tekst door middel van cursiveringen en expliciete verwijzingen. Waar dit niet is gebeurd, is sprake van een General Introduction of Observation. Hoewel gestreefd is naar bondigheid, zijn de citaten van de Conclusions tamelijk uitvoerig. Hun technische karakter maakt dat onvermijdelijk. De Conclusions zijn via de database van het ESH (zie onder literatuur - electronische bronnen) te raadplegen, maar de general introductions en observations zijn daarin helaas niet meer opgenomen, waarvoor als argument wordt gegeven dat zij juridisch geen bindende status hebben. Men zal zich voor inzage hiervan moeten wenden tot de papieren versies.

Stukken afkomstig van het Regeringscomité en de Parlementaire Vergadering komen, gezien hun huidige beperkte rol, slechts sporadisch aan de orde.

Toezichtsmechanisme

Een belangrijk deel van het commentaar bestaat uit een weergave van de belangrijkste uitspraken, verklaringen en observaties van instanties die een rol spelen in het toezichtsmechanisme. Het systeem van toezicht is in de loop van de tijd enkele malen ingrijpend veranderd, mede doordat zo veel mogelijk *de facto* werking is gegeven aan het nimmer in werking getreden protocol tot wijziging. Hierdoor is het voor de niet-geoefende lezer geen sinecure het gehele mechanisme te doorgronden.

Het toezichtsmechanisme vangt aan met de periodieke rapportages die verdragspartijen moeten indienen. De procedure voor de indiening is enkele malen veranderd. Sinds 1997 dient elke verdragpartij tweejaarlijks een rapport in te dienen met betrekking tot de 'hardcorebepalingen' (art. 1, 5, 6, 9, 12, 13, 16 en 19 ESH). Tevens dient elke verdragpartij tweejaarlijks een rapport in te dienen met betrekking tot de helft van de overige bepalingen, welke aldus een referentie-periode hebben van vier jaar.

Deze rapporten worden bestudeerd door een comité van experts, tegenwoordig Europees Comité voor Sociale Rechten genaamd. Zijn bevindingen worden gepubliceerd in zgn. 'Conclusions' waarvan tot op heden zeventien cycli zijn verschenen. Deze Conclusions vormen het zwaartepunt van het toezicht en

met zijn 'case law' wordt door overheden terdege rekening gehouden. Vervolgens buigt het sub-comité van het Sociale Regeringscomité (kortgezegd: het Regeringscomité) zich over de landenrapportages en de Conclusions. Waar het Regeringscomité zich vroeger regelmatig kritisch uitliet over interpretaties gegeven door het Europees Comité voor Sociale Rechten, weerhoudt het zich tegenwoordig van juridische interpretaties en bereidt het de beslissingen van het Comité van Ministers voor. De Raadgevende Vergadering (gewoonlijk Parlementaire Vergadering genaamd) kon vroeger ook haar visie geven op de implementatie en interpretatie van het Handvest, maar speelt tegenwoordig geen specifieke toezichthoudende rol meer. Als laatste houdt het Comité van Ministers toezicht op de implementatie van het Handvest. Over het algemeen beperkt het Comité van Ministers zich tot het bevestigen van de Conclusions en het aansporen van landen hieraan te voldoen. Tevens autoriseert het sinds enkele jaren de publicatie van formeel-juridisch niet-bindende 'Explanatory Reports', die door het secretariaat worden opgesteld en die van nut kunnen zijn voor de interpretatie van verscheidene instrumenten van de Raad van Europa.

Overige

Het herziene ESH is door Nederland wel ondertekend, doch de goedkeuringswet moet nog worden ingediend en behandeld alvorens ratificatie kan plaatsvinden. Om deze reden is besloten dat na ratificatie van het herziene ESH naar verwachting over enkele jaren een nieuwe druk van deze uitgave zal verschijnen waarvan het herziene ESH de basis zal vormen.

Naast het Europees Sociaal Handvest zijn in deze uitgave de teksten opgenomen van het Europees Verdrag inzake sociale en medische bijstand en het Europees Verdrag inzake de rechtspositie van migrerende werknemers, met uitvoeringswetgeving. Er is van afgezien ook de Europese Code inzake sociale zekerheid op te nemen, gezien het specifieke en technische karakter van dit verdrag.

Tot slot danken wij mw. mr. C.J. Staal van het Ministerie van Sociale Zaken en Werkgelegenheid en mw. Brigitte Chorier-Napiwocka, documentaliste van de Raad van Europa, voor hun inlichtingen en hulp bij het verzamelen van de benodigde documentatie.

Bewerkers

INHOUD

AFKORTINGEN

AP	Aanvullend Protocol bij het Europees Sociaal Handvest
ARRvS	Afdeling Rechtspraak van de Raad van State
bew.	*bewerkers*
Concl. XVI-1 vol. 1, 15	Concl.: 'Conclusions' van het Europees Comité voor Sociale Rechten XVI-1 vol. 1: het Romeinse cijfer duidt aan het nummer van de cyclus van toezicht, welke vervolgens is onderverdeeld in twee delen. Een deel is -in papieren versie- vervolgens opgedeeld in volumes en soms in addenda. 15: Het (soms Romeinse cijfer) duidt aan de bladzijde(s) waar de geciteerde passage uit de Conclusions voorkomt.
CRvB	Centrale Raad van Beroep
ECSR	European Committee on Social Rights
E(E)G	Europese (Economische) Gemeenschap
ESH	Europees Sociaal Handvest
ETS	European Treaty Series
EVRM	Europees Verdrag tot bescherming van de Rechten van de Mens
HR	Hoge Raad der Nederlanden
IAO	Internationale Arbeidsorganisatie
ILO	International Labour Organization (IAO)
IVBPR	Internationaal Verdrag inzake Burgerrechten en Politieke Rechten
IVESCR	Internationaal Verdrag inzake Econonomische, Sociale en Culturele Rechten
JAR	*Jurisprudentie Arbeidsrecht*
MvA I	memorie van antwoord (Eerste Kamer)
MvA II	memorie van antwoord (Tweede Kamer)
MvT	memorie van toelichting

NEV II	nota naar aanleiding van het eindverslag van de desbetreffende commissie van de Tweede Kamer
NJ	*Nederlandse Jurisprudentie*
NJCM	Nederlands Juristen Comité voor de Mensenrechten
14e Rap. (II), 183	Rap.: rapport uitgebracht door het Regeringscomité in het kader van een cyclus van toezicht onder het ESH 14e (II): dit cijfer duidt aan een deel van de cyclus van toezicht, oftewel corresponderend met Concl. XIV-II. 183: dit cijfer verwijst naar de bladzijde waar de geciteerde passage uit het rapport voorkomt
7e Rap. Art. 22	Zevende Rapport uitgebracht door het Europees Comité voor Sociale Rechten in het kader van de niet-aanvaarde bepalingen, i.e. art. 22 ESH.
Rap. Doc. 2943 (I), 4	Rap.: rapport van de Parlementaire Vergadering in het kader van een cyclus van toezicht onder het ESH. (I): dit cijfer duidt het nummer van de cyclus van toezicht aan.
Rb.	arrondissementsrechtbank
Res Chs (2001) 8	Resolution aangenomen in 2001 door het Comité van Ministers in het kader van het Europees Sociaal Handvest met als volgnummer 8.
RSV	*Rechtspraak Sociale Verzekeringen*
Rv	Wetboek van Burgerlijke Rechtsvordering
RvdW	*Rechtspraak van de Week*
RvE	Raad van Europa
SMA	*Sociaal Maandblad Arbeid*
Sr	Wetboek van Strafrecht
Stb.	*Staatsblad*
TN	Toelichtende Nota
Trb.	*Tractatenblad*
USZ	*Uitspraken Sociale Zekerheid*

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Electronische bronnen

Raad van Europa	http://www.coe.int
Europees Sociaal Handvest	http://www.coe.int/T/E/Human_Rights/Esc
Database ESH	http://hudoc.esc.coe.int (met conclusions en collectieve klachtenprocedures)
Verdragenbank RvE	http://conventions.coe.int
Comité van Ministers	https://wcm.coe.int (met o.a. stukken van het Regeringscomité en het Comité van Ministers)
Parlementaire Vergadering	http://assembly.coe.int
Internationale Arbeidsorganisatie	http://www.ilo.org
UNHCHR	http://www.unhchr.ch/ (met case-law betr. verscheidene internationale verdragen, e.g. IVESCR en IVBPR)

Europees Sociaal Handvest

Aanvullend Protocol

EUROPEES SOCIAAL HANDVEST

Datum en plaats van sluiting: 18 oktober 1961, Turijn.

Tekst is bekendgemaakt in: *Trb.* 1962, 3 (Engelse en Franse tekst, de laatste gewijzigd in *Trb.* 1963, 90) en *Trb.* 1963, 90, gewijzigd in *Trb.* 1980, 65 (Nederlandse vertaling).

Gegevens: *Trb.* 1962, 3, *Trb.* 1963, 90, *Trb.* 1980, 65, *Trb.* 1983, 44, *Trb.* 1995, 233 en *Trb.* 2004, 15.

Inwerkingtreding: 26 februari 1965.

Goedkeuring: Rijkswet van 2 november 1978, *Stb.* 1978, 639 voor Nederland, met uitzondering van artikel 19 lid 8 en 10 en met een voorbehoud ten aanzien van art. 6 lid 4, alsmede voor de Nederlandse Antillen voor wat betreft de artikelen 1, 5, 6 (met voorbehoud) en 16. Gezien de verkregen autonomie van Aruba vanaf 1 januari 1986, acht Aruba zich op eenzelfde wijze gebonden aan het ESH als de Nederlandse Antillen.

Bekrachtiging: op 22 april 1980, *Trb.* 1980, 65.

Inwerkingtreding voor Nederland: 22 mei 1980.

Artikel 19 lid 8 en lid 10 is goedgekeurd bij wet van 2 december 1982, *Stb.* 1982, 678 voor Nederland en bekrachtigd op 8 februari 1983, *Trb.* 1983, 44.

Zie voor de parlementaire behandeling van de goedkeuringswet van 2 november 1978 in de Staten-Generaal:

Kamerstukken II 1965/66, 8606, R 533; 1966/67, 8606, R 533; 1968/69, 8606, R 533; 1969/70, 8606, R 533; 1970/71, 8606, R 533; 1976/77, 8606, R 533; 1977/78, 8606, R 533;

Handelingen II 1977/78, p. 1848-1871, 1885-1910, 1947-1948, 2541-2553, 2589-2591;

Kamerstukken I 1977/78, 8606, R 533 (71, 71*a*, 71*b*, 71*c*);

Handelingen I 1978/79, p. 29-33; 44-47.

Zie voor de parlementaire behandeling van de goedkeuringswet van 2 december 1982:

Kamerstukken II 1979/80, 16075 (R 1142); 1981/82, 16075 (R 1142);

Handelingen II 1981/82, p. 2755-2764; 2773-2781, 2841;

Kamerstukken I 1981/82, 16075 (R 1142) (71, 110); 1982/83, 16075 (R 1142) (9, 9*a*);

Handelingen I 1982/83, p. 122-127, 134-142.

De ondertekenende Regeringen, Leden van de Raad van Europa,

Overwegende, dat het doel van de Raad van Europa is een grotere eenheid tussen zijn Leden tot stand te brengen ten einde de idealen en beginselen welke hun gemeenschappelijk erfdeel zijn, veilig te stellen en te verwezenlijken en hun economische en sociale vooruitgang te bevorderen, in het bijzonder door de handhaving en verdere verwezenlijking van de rechten van de mens en de fundamentele vrijheden;

Overwegende, dat in het op 4 november 1950 te Rome ondertekende Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden, en het daarbij behorende Protocol, dat op 20 maart 1952 te Parijs werd ondertekend, de lid-staten van de Raad van Europa overeenkwamen, dat zij hun volkeren de daarin opgesomde burgerlijke en politieke rechten en vrijheden zouden waarborgen;

Overwegende, dat ieder in het genot dient te worden gesteld van sociale rechten, ongeacht ras, huidskleur, geslacht, godsdienst, politieke overtuiging, nationale afstamming of maatschappelijke afkomst;

Vastbesloten, gezamenlijk alles in het werk te stellen om het levenspeil te verhogen en het welzijn van alle bevolkingsgroepen, zowel in de stad als op het platteland, te bevorderen door middel van doelmatige instellingen en maatregelen;

Zijn als volgt overeengekomen:

EUROPEAN SOCIAL CHARTER

The Governments signatory hereto, being Members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the European Convention for the protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950, and the Protocol thereto signed at Paris on 20th March 1952, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;

Being resolved to make every effort in common to improve the standard of living and to promote the social well-being of both their urban and rural populations by means of appropriate institutions and action;

Have agreed as follows:

Aantekeningen

TOELICHTING

Parlementaire Vergadering

– The first principle which must be clearly understood and which must serve as the solid basis for the implementation and supervision of the Charter is that it is a treaty in the ordinary meaning of the term, no more no less. It is unanimously agreed that in the terminology of public international law the terms 'treaty', 'convention' and 'charter' [At least where the Charter is a legal instrument subject to ratification and not a mere declaration of principles] are synonymous. The three terms are similar in nature and have the same legal force. The European Social Charter might equally be called the European Social Treaty. As far as the States' obligations are concerned, therefore, the European Social Charter must be regarded from

the legal point of view as a treaty like any other. (Rap. Doc. 2943 (I), 4)

DEEL I

De Overeenkomstsluitende Partijen stellen zich ten doel met alle passende middelen, zowel op nationaal als internationaal terrein, zodanige voorwaarden te scheppen dat de hiernavolgende rechten en beginselen daadwerkelijk kunnen worden verwezenlijkt:

1. Een ieder dient in staat te worden gesteld in zijn onderhoud te voorzien door werkzaamheden die hij vrijelijk heeft gekozen.

2. Alle werknemers hebben recht op billijke arbeidsvoorwaarden.

3. Alle werknemers hebben recht op veilige en hygiënische arbeidsomstandigheden.

4. Alle werknemers hebben recht op een billijke beloning welke hun en hun gezin een behoorlijk levenspeil waarborgt.

5. Alle werknemers en werkgevers hebben recht op vrijheid van vereniging in nationale of internationale organisaties voor de bescherming van hun economische en sociale belangen.

6. Alle werknemers en werkgevers hebben het recht collectief te onderhandelen.

7. Kinderen en jeugdige personen hebben recht op een bijzondere bescherming tegen de gevaren voor lichaam en geest waaraan zij blootstaan.

8. Zwangere vrouwen en andere vrouwen in de daarvoor in aanmerking komende omstandigheden hebben bij hun arbeid in dienstbetrekking recht op bijzondere bescherming.

9. Een ieder heeft recht op een doelmatige beroepskeuzevoorlichting, die erop gericht is hem bij te staan bij de keuze van een beroep dat strookt met zijn persoonlijke aanleg en belangstelling.

10. Een ieder heeft recht op een doelmatige vakopleiding.

11. Een ieder heeft het recht om gebruik te maken van alle voorzieningen welke hem in staat stellen in een zo goed mogelijke gezondheid te verkeren.

12. Alle werknemers en personen te hunnen laste hebben recht op sociale zekerheid.

13. Een ieder die geen voldoende middelen van bestaan heeft, heeft recht op sociale en geneeskundige bijstand.

14. Een ieder heeft recht op bijstand door diensten voor sociaal welzijn.

15. Iedere minder-valide heeft recht op vakopleiding en revalidatie in beroep en samenleving, ongeacht de oorzaak en aard van zijn invaliditeit.

16. Het gezin als fundamentele maatschappelijke eenheid heeft recht op een voor zijn volledige ontplooiing doelmatige sociale, wettelijke en economische bescherming.

17. Moeders en kinderen hebben, ongeacht de echtelijke staat en de gezinsverhoudingen, recht op een passende sociale en economische bescherming.

18. De onderdanen van de ene Overeenkomstsluitende Partij hebben het recht op het grondgebied van elke andere Partij een op winst gerichte bezigheid uit te oefenen op voet van gelijkheid met de onderdanen van laatstgenoemde Partij, behoudens beperkingen op grond van economische of sociale redenen van dringende aard.

19. Migrerende werknemers die onderdaan van een der Overeenkomstsluitende Partijen zijn, alsmede hun gezinnen, hebben recht op bescherming en bijstand op het grondgebied van elke andere Overeenkomstsluitende Partij.

PART I

The Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in

character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.

2. All workers have the right to just conditions of work.

3. All workers have the right to safe and healthy working conditions.

4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.

5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.

6. All workers and employers have the right to bargain collectively.

7. Children and young persons have the right to a special protection against physical and moral hazards to which they are exposed.

8. Employed women in case of maternity, and other employed women as appropriate, have the right to a special protection in their work.

9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.

10. Everyone has the right to appropriate facilities for vocational training.

11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

12. All workers and their dependents have the right to social security.

13. Anyone without adequate resources has the right to social and medical assistance.

14. Everyone has the right to benefit from social welfare services.

15. Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability.

16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.

17. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.

18. The nationals of anyone of the Contracting Parties have the right to engage in any gainful occupation in the territory of anyone of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.

19. Migrant workers who are nationals of a Contracting Party and their families have the right to protection and assistance in the territory of any other Contracting Party.

Aantekeningen

ALGEMEEN

- Vergelijk de artikelen 22 t/m 25 van de Universele Verklaring van de Rechten van de Mens.
- Zie voorts het Statuut van de Internationale Arbeidsorganisatie, zoals laatstelijk gewijzigd op 19 juni 1997, *Trb.* 1998, 18 en de bijlage.
- Zie tevens de ILO Declaration on Fundamental Principles and Rights at Work, 1998.
- Zie verder het herziene Europees Sociaal Handvest, 1996.

PARLEMENTAIRE BEHANDELING

Directe werking

- 'Het Handvest heeft geen "interne werking" in de deelnemende Staten. Onderdanen van partijen kunnen derhalve geen beroep doen op het Handvest voor een nationaalrechtelijke instantie. Uit de bijlage (onder het hoofd Deel III) blijkt, dat het Handvest slechts verplichtingen van internationale aard bevat. Het toezicht op de naleving van deze verplichtingen kan

alleen op de in deel IV voorziene wijze geschieden.' *(MvT 8606, R 533)*

– 'De beantwoording van de vraag, of een overeenkomst of bepalingen daaruit rechtstreekse werking heeft of hebben, hangt in het algemeen hiervan af, of de partijen bij de overeenkomst deze werking hebben beoogd. Bij het Europees Sociaal Handvest is dit niet het geval, getuige o.m. de bijlage bij Deel III. Inderdaad stellen de door de commissie genoemde artikelen van het Handvest tegenover elkaar enerzijds de verplichting voor de staten tot het verrichten van zekere handelingen, anderzijds de erkenning door hen van zekere rechten van personen. Dit wil echter niet zeggen, dat in de laatstbedoelde gevallen deze personen de genoemde rechten rechtstreeks aan het Handvest kunnen ontlenen. Veeleer is door de gebezigde terminologie getracht tot uitdrukking te brengen, dat in het ene geval het accent van de aan de verdragspartij opgelegde verplichting rust op de door haar te treffen maatregelen, terwijl in het andere geval, afgezien of maatregelen geboden zijn, het uitgangspunt van het te voeren regeringsbeleid het recht van bedoelde personen zal zijn. De desbetreffende bepalingen van het Handvest blijven zich echter richten tot de staat.' *(MvA II, 8606, R 533)*

– 'Het *(de directe werking, bew.)* blijft echter een kwestie van uitleg van een verdragsbepaling in de samenhang van het verdrag waarin die bepaling is opgenomen. Een beslissend oordeel – ik moet daar evenwel de aandacht op vestigen – kan niet goed achter de regeringstafel worden gegeven. Het is uiteindelijk een kwestie ten aanzien waarvan de beslissing aan de rechter toevalt.' *(Handelingen II, p. 1889, Min. van Justitie de Ruiter, 5 april 1978)*

TOELICHTING

Europees Comité voor Sociale Rechten

– '(...) Although Part I of the Charter only defines ts objectives and does not comprise any precise legal obligation, the principles it sets out are nonetheless, n many instances, a useful basis for interpreting the undertakings *(neergelegd in deel II, bew.)* made with hese objectives in mind (Article 20 (1)).' *(Concl. III, (IV)*

DEEL II

De Overeenkomstsluitende Partijen verbinden zich, overeenkomstig het bepaalde in Deel III, zich gebonden te achten door de verplichtingen, vervat in de hiernavolgende artikelen en leden.

PART II

The Contracting Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following Articles and paragraphs.

Aantekeningen

TOELICHTING

Europees Comité voor Sociale Rechten

– Zie voor zaken betreffende reciprociteit en werkingssfeer met betrekking tot de te beschermen personen, de aantekeningen onder de bijlage.

– 'The Social Charter, which is designed to promote social progress, is a legal instrument which must be interpreted according to the normal rules for interpreting international treaties. Where a clause is clear and precise, it must be applied as it stands. Thus, where Article 2 (3) provides that the Contracting Aprties undertake "to provide for a minimum of two weeks' annual holiday with pay", in no circumstances could a holiday of less than two weeks, be it only one day, be deemed satisfactory.

However, many of the provisions of the Charter are very general in character (...). Although these provisions are phrased in very general terms, they enshrine legal obligations. The Committee of Independent Experts is therefore obliged to define their substance. The legal scope of the undertaking has to be determined in order to assess whether the undertaking has been fulfilled or not.

When the Committee considers the reports, it is constantly concerned *to determine the reality behind the appearances*. Although legislation may not exist, the objectives of the Charter may be attained as a result of reality being in advance of the text of the law.

Conversely, legislation which at first sight may seem very satisfactory is sometimes inadequately or poorly applied. The search for this kind of reality is implicitly required by the terms of the Charter, as in Article 4 or Article 33, both of which provide that certain undertakings may be implemented, otherwise than by law "by other means appropriate to national conditions" as, in particular stated Article 4. Similarly, Article 33 provides that compliance with certain provisions can be regarded as effective if they are applied "to the great majority of the workers concerned".

The extent to which undertakings are honoured must often be gauged in the light of economic and social factors. The Committee of Independent Experts will refrain, of course, from expressing any political opinion. Where, however, the terms of the Charter are very general in character and invoke notions such as "reasonable daily and weekly working hours" or a "decent standard of living", (...) it would be impossible to assess in concrete terms the extent to which they are implemented withou taking account of the features of the context in which these undertakings have to be applied.

In this respect, considerations of two kinds can and must be combined:

1. Each country's economic and social situation must be considered, by recognising the differences in gross national product per head of population in the various Contracting States, the notion of a decent standard of living will necessarily be interpreted differently from one country to another.

2. However, at the same time, since the Social Charter is a European instrument, such interpretations must necessarily take account of the average situation in Council of Europe member states and of what is generally regarded as 'normal', 'reasonable' and 'decent' in terms of the collective conscience of the peoples concerned.

The assessments required are, of course, made only to the extent needed for defining the legal implications of the undertakings and for ensuring their satisfactory implementation. As the Committee pointed out in its previous conclusions, many of the Charter's provisions are of dynamic nature requiring the Contracting Parties to make progress in their legislation and improve the sitatuions of their peoples (...). This reflects the determination of the authors of the Charter to make it an *instrument of progress* to improve the

lot of the peoples concerned, and not merely reflecting the current situation.

This is an objective which the Committee of Independent Experts is legally bound to take into account in interpreting the various provisions of the Charter and in assessing the extent to which the undertakings made are fulfilled.

Besieds, the application in dynamic terms of some of these provisions frequently calls for programmes of action which can only be based on a series of measures, progressively spread out ver a certain period. The role of the Committee of Experts is to follow a similar method and make regular surveys of the progress made, or still be made, at national level, thus allowing governments to review the situation in the lights of its comments.' *(Concl. III. XIII-XIV)*

Recht op arbeid

Art. 1. Ten einde de onbelemmerde uitoefening van het recht op arbeid te waarborgen verbinden de Overeenkomstsluitende Partijen zich:

1. de totstandbrenging en handhaving van een zo hoog en stabiel mogelijk werkgelegenheidspeil, met het oogmerk een volledige werkgelegenheid te verwezenlijken, als een hunner voornaamste doelstellingen en verantwoordelijkheden te beschouwen;

2. het recht van de werknemer om in zijn onderhoud te voorzien door vrijelijk gekozen werkzaamheden daadwerkelijk te beschermen;

3. kosteloze arbeidsbemiddelingsdiensten in te stellen of in stand te houden voor alle werknemers;

4. te zorgen voor doelmatige beroepskeuzevoorlichting, vakopleiding en revalidatie en deze te bevorderen.

The right to work

Art. 1. With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and mainte-

nance of as high and stable a level of employment as possible, with a view to the attainment of full employment;

2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;

3. to establish or maintain free employment services for all workers;

4. to provide or promote appropriate vocational guidance, training and rehabilitation.

Aantekeningen

ALGEMEEN

- Artikel 1 is tevens bekrachtigd voor de Nederlandse Antillen en Aruba (zie ook artikel 34).

TOELICHTING

Europees Comité voor Sociale Rechten

- 'In the Committee's opinion, it is of fundamental importance, in the general context of the Charter, for the effective exercise of several esential rights set forth in the Charter is inconceivable unless the right to work is guaranteed first. (...) Furthermore, the scope of certain of its provisions is very wide, since they contain dynamic elements implying continuous action on the part of the States which have accepted them.' *(Concl. I, 13)*
- 'The Committee recalls that the right to work is a fundamental dimension of human existence.' *(Concl. XIV-1, 32)*

Aantekeningen lid 1

ALGEMEEN

Nederlandse wetgeving

- Art. 19 lid 1 en 3 Grondwet.

Arbeidsvoorzieningenwet 1996, wet van 29 november 1996, *Stb.* 1996, 618.

Wet allocatie arbeidskrachten door intermediairs, wet 14 mei 1998, *Stb.* 1998, 306.

INTERNATIONALE CONTEXT

Verenigde Naties

- Vgl. artikel 6 lid 2 IVESCR.

Internationale Arbeidsorganisatie

- Nr. 122 (werkgelegenheidspolitiek) *Trb.* 1965, 11. Nederlandse vertaling *Trb.* 1965, 177.

Bekrachtigd op 9 jan. 1967, *Trb.* 1967, 28, alsmede voor de Nederlandse Antillen en Aruba.

Zoals eerder vermeld heeft Aruba interne autonomie verkregen op 1 januari 1986. Aruba achtte zich daarbij gebonden aan vele van de verdragen waar de Nederlandse Antillen ook reeds gebonden aan was. Om die reden zal bij informatie over bekrachtiging van verdragen verwezen worden naar eenzelfde informatie als t.a.v. de Nederlandse Antillen, met dien verstande dat formele zelfstandige binding pas op 1 januari 1986 tot stand is gekomen.

PARLEMENTAIRE BEHANDELING

- M.b.t. leden 1, 3 en 4: 'De ondergetekenden zijn van oordeel, dat hier te lande aan het daarin gestelde ruimschoots wordt voldaan.' *(MvT, 8606, R 533)*

TOELICHTING

Europees Comité voor Sociale Rechten

- 'The Committee interpreted this provision as imposing an obligation as to means rather than an obligation as to results. It recognised that in order to decide whether a country is really fulfilling this obligation, it is necessary to adopt a dynamic standpoint, to assess the situation existing at a given moment, having regard to the continuous action pursued. The Committee pointed out that if a State at any time abandoned the objective of full employment in favour of an economic system providing for a permanent pool of unemployed, it would be infringing the SocialCharter.' *(Concl. I, 13-14)*
- 'The decline of unemployment alone is not a sufficient indication of efforts towards the achievement of full employment when, for example, unemployment still affects 5% of the active population. On the

other hand, a large increase in the rate of unemployment would not prevent the Committee from concluding that the Charter was being satisfied, so long as a substantial effort is made to improve the labour market situation.' *(Concl. III, 3)*

– 'The Committee considers that the full application of the Charter and the observance of its provisions should both contribute to combating unemployment by ensuring a better regulation of the labour market and should alleviate the especially serious consequences of loss or lack of employment.' *(Concl. XIV-1, 33)*

– 'For the first time the Committee has published its conclusions on the Revised European Social Charter (Conclusions 2002). It draws the attention of States bound by the Charter of 1961 on the contents of the General Introduction to Conclusions 2002. The Committee makes the following remarks: Basing itself on its deliberations in recent supervision cycles, the Committee has decided to assess the conformity of national situations with the obligation laid down by Article 1§1 of the Revised Charter *(welke woordelijk gelijk gebleven is aan artikel 1 lid 1 ESH 1961, bew.)*. The assessment rests on a certain number of legal, economic and social indicators which are particularly linked to the results achieved by states in providing active assistance to unemployed persons and the translation of economic growth into employment.' *(Concl. XVI-1 vol.1, 9)*

– 'The downturn in the world economy in 2001 had its impact on the Dutch economy. (...) The Committee observes that long-term unemployment has been constantly decreasing since 1994. In 2001 the long-term unemployed constituted 25,8 % of all unemployed. This is a very low figure compared to the EU average (40,1 % for the reference period). (...) The Committee notes from the National Action Plan 2002 that the priorities of Dutch employment policy for that year were based on *inter alia* following key issues: moving towards an active labour market policy, increasing labour supply, improving the functioning of the labour market and removing existing bottlenecks, tax reform to promote employment and training, lifelong learning, promoting equal opportunities. The Dutch government considers it necessary to steer the future labour market policy towards reducing benefit dependency and increasing the number of people moving away from subsidized employment into unsubsidised work. It also focuses its effort on combating social security fraud. (...) The Committee concludes that the situation in the Netherlands is in conformity with Article 1§1 of the Charter.' *(Concl. XVII-1 vol. 1, 135-137)*

Aantekeningen lid 2

ALGEMEEN

– Deel II van Bijlage ESH is van toepassing: 'This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.'

Vgl. artikel 1 van het Aanvullend Protocol en de Conclusies van het Europees Comité voor Sociale Rechten aldaar, welke ingaan op de relatie tussen artikel 1 lid 2, artikel 4 lid 3 ESH en artikel 1 AP.

NEDERLANDSE WETGEVING

– Wet gelijke behandeling van mannen en vrouwen, wet van 1 maart 1980, *Stb.* 1980, 86.

Algemene wet gelijke behandeling, wet van 2 maart 1994, *Stb.* 1994, 230.

Wet gelijke behandeling op grond van handicap en chronische ziekte, wet van 3 april 2003, *Stb.* 2003, 206.

Buitengewoon Besluit Arbeidsverhoudingen 1945, besluit van 5 oktober 1945, *Stb.* 1945, F 214.

Burgerlijk Wetboek art. 7:646 e.v.

Wetboek van Strafrecht artikel 429.

Grondwet artikel 1, 19.

INTERNATIONALE CONTEXT

Europese Unie

– Richtlijn nr. 76/207/EEG (Gelijke behandeling m/v bij de arbeid).

Richtlijn nr. 99/70/EG (Gelijke behandeling m/v).

Richtlijn nr. 2002/73/EG (Gelijke behandeling m/v).

Raad van Europa

– Artikel 4 EVRM.

Verenigde Naties

- Artikel 6 lid 1 IVSCR.
Artikel 8 IVBPR.

Internationale Arbeidsorganisatie

- Nr. 29 (gedwongen of verplichte arbeid), *Stb.* 1933, 236 (met Nederlandse vertaling). Bekrachtigd op 31 maart 1933, *Trb.* 1957, 161. Tevens voor de Nederlandse Antillen en Aruba.

Nr. 105 (afschaffing van gedwongen arbeid), *Trb.* 1957, 210 (met Nederlandse vertaling). Bekrachtiging mede voor de Nederlandse Antillen en Aruba op 18 februari 1959, *Trb.* 1959, 27.

Nr. 98 (recht zich te organiseren en collectief te onderhandelen), *Trb.* 1972, 105. Gewijzigde Nederlandse vertaling *Trb.* 1979, 79. Bekrachtigd op 22 december 1993, *Trb.* 1994.

Nr. 111 (discriminatie in arbeid en beroep), *Trb.* 1962, 41. Nederlandse vertaling *Trb.* 1972, 70. Bekrachtigd mede voor de Nederlandse Antillen en Aruba op 15 maart 1973, *Trb.* 1973, 48.

Nr. 156 (gelijke kansen en gelijke behandeling van mannelijke en vrouwelijke arbeiders; arbeiders met gezinsverantwoordelijkheden), *Trb.* 1981, 244. Nederlandse vertaling in *Trb.* 1982, 101.

Bekrachtigd op 24 maart 1988, *Trb.* 1988, 29.

PARLEMENTAIRE BEHANDELING

- 'In verband met de goedkeuring van dit lid zijn de ondergetekenden van oordeel, dat het wenselijk is de strafsanctie op de overtreding van artikel 6 van het Buitengewoon Besluit Arbeidsverhoudingen 1945 af te schaffen.' *(MvT, 8606, R 533)*

TOELICHTING

Europees Comité voor Sociale Rechten

- 'One of the most important concepts examined was the term "worker" as used in several provisions of the Charter. This was carefully considered so as to see whether it covered all categories of workers, including the self-employed, or whether it was to be regarded as apllying exclusively to wage-earners. In the light of the *travaux préparatoires* the Committee arrived at the conclusion that in principle the term "worker" was intended to cover both employed and self-employed persons, but that this interpretation could not be applied in all cases. Where the context so requires, the term "worker" may have to be considered as restricted to employed persons (Compare e.g. Article 1 Para 3 with Article 1 Para 2 and 4, of Article 4, Para 4 with Article 4, Para 1).' *(Concl. I, 8)*

- 'The Committee recalls that one of the essential aspects of the right to work is that of the worker to earn his or her living in an occupation freely entered upon. Two fundamental aspects of this right are the elimination of all forms of discrimination in employment and the prohibition of forced labour.' *(Concl. XIV-1 vol. 1, 35)*

- 'For the first time the Committee has published its conclusions on the Revised European Social Charter (Conclusions 2002). It draws the attention of States bound by the Charter of 1961 on the contents of the General Introduction to Conclusions 2002. The Committee makes the following remarks: As far as Article 1§2 (right to earn one's living in an occupation freely entered upon) is concerned, a provision which has not been amended in the Revised Charter, the Committee developed its case law as follows:

- first, it holds that most of the requirements for compliance with Article 1§2 as regards the prohibition of discrimination on the ground of sex apply to any ground of discrimination;

- secondly, it will henceforth systematically examine the length of civilian service, the loss of unemployment benefits for refusal to take up employment and the consequences of part-time work.

These questions are gathered under a new heading 'Other aspects of the right to earn one's living in an occupation freely entered upon'.' *(Concl. XVI-1 vol.1, 9)*

Discrimination in employment

- 'The Committee points out that the Charter prohibits all forms of discrimination in employment, and especially discrimination based on sex, race, or trade union membership. Many other Articles of the Charter contain specific non-discrimination provisions, Articles 19, 16, and 13 in particular, as well as Articles 1 and 4 of the Additional Protocol. In fact, all the Articles of the Charter may be seen as including the principle of non-discrimination, to some extent at least.

The importance given to this question makes the Social Charter an especially encompassing legal instrument in the field. The revised Charter has increased this importance by adding a general clause of non-discrimination.

The Committee considers that most of the Contracting Parties to the Charter now have sufficiently protective legislation and regulations against discrimination. Nevertheless, some discrimination persists:

- in Portuguese law: Article 2 (1) of Legislative Decree Nr. 97/77 obliges companies with more than five employees to ensure that at least 90 % of the staff are Portuguese nationals;
- in the United Kingdom, the law provides that certificates issued in pursuance of Section 42 of the Fair Employment Act prohibit access to a court appeal, which infringes the right to protection against discrimination in access to employment on ground of religious faith or political opinion;
- in collective agreements in Cyprus: the Committee has noted that a degree of difference in treatment appears to remain, especially with the introduction of two wage categories (A and B) for workers with few qualifications. In collective agreements in the building sector, unskilled workers are graded into A and B categories and men are excluded from category B.

The Committee has realised that the real difficulty encountered in complying with this provision does not arise from the legislative or statutory framework but in the effective practical application of normative provisions.' *(Concl. XIV-1, p. 35-36)*

- 'Under Article 169 of the Constitution, treaties ratified by *Cyprus* are superior to domestic law. Several of these treaties are relevant to the implementation of Article 1§2 of the Charter, notably ILO Convention Nr. 111 on discrimination (employment and occupation), the UN Convention on the Elimination of All Forms of Discrimination Against Women and the UN Convention on the Elimination of Racial Discrimination.' *(Concl. XVI-1 vol. 1, m.b.t. Cyprus, 94)*
- 'The Committee takes note of the information contained in the *Netherlands'* report. (...) Under the AWGB (...), where the aim of differential treatment is to place women in a privileged position in order to eliminate or reduce *de facto* inequalities and the treatment is proportionate to that aim, it is permitted. (...)

Where the aim of differential treatment is to place persons belonging to a particular ethnic or cultural group in a privileged position in order to eliminate or reduce *de facto* inequalities and the treatment is proportionate to that aim, it is permitted. In filling a post, bodies or institutions founded on religious, ideological or political principles may impose special requirements which they consider necessary to the work, given the nature of their activities. (...)

The Committee notes that improving the position for ethnic minorities in the labour market continues to be one of the main goals of the country's employment policy. The Committee refers to its conclusion under Article 5 with regard to protection against discrimination on the ground of trade union membership.' *(Concl. XVI-1 vol. 2, p. 435-438)*

- '(...) the Committee recalls that Article 1§2 requires citizens of Contracting Parties which are not members of the European Union or parties to the European Economic Area Agreement to be entitled to the same rights as nationals, with regard to jobs not involving the exercise of public authority, and the same rights as citizens of European Union and European Economic Area countries, with regard to all other jobs.' *(Concl. XVII-1 vol. 1, m.b.t. Nederland, 139)*

Forced Labour

- 'The Committee reaffirmed its previous view that the coercion of any worker to carry out work against his wishes, and without his freely expressed consent, is contrary to the Charter. The same applied to coercion of any worker to carry out work he had previously freely agreed to do, but which he subsequently no longer wanted to carry out. Finally, the Committee held that the peculiar status of the military may justify penal sanctions for breach of a voluntary engagement without constituting a breach of the prohibition of forced labour.' *(Concl. III, 55)*
- 'In drawing up its Conclusion, as regards the application of this provision by the states concerned, the Committee wishes to recall that – according to its interpretation, shared by the Governmental Committee and the Parliamentary Assembly – the prohibition of forced labour implies that disobedience to orders or the interruption or abandonment of service by certain categories of staff (as in the merchant navy or aviation) cannot be subjected to penal measures unless the act giving rise to the charge endangered or

was capable of endangering, the safety of the ship or aircraft or the life or health of those on board.' *(Concl. V, 6)*

Vgl. overigens de IAO-Conventie nr. 180 (1996, geratificeerd op 16 juni 2003, *Trb.* 2003, 178), welke in artikel 7 par. 1 stelt: '1. Nothing in this Convention shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.', *bew.*)

– 'It recalls the fact that even though most of these provisions have probably fallen into disuse, their mere existence constitutes a breach of Article 1 para. 2. These provisions may be applied at any time and as long as they conserve full legal force their implementation cannot be ruled out. The argument of disuse is in fact another reason to proceed to their abrogation.' *(Concl. XIV-1 vol. 1, 39)*

– '*Belgium* has ratified ILO conventions Nos. 29 (forced or compulsory labour) and 105 (abolition of forced labour). The merchant navy's disciplinary and criminal code provides for penal sanctions in the event of disciplinary offences on the part of seamen even when the safety of a ship or the lives or health of the people on board are not at stake. The Committee recalls that, since supervision cycle XIII-4 (1996), it has considered that the fact that these provisions remain in force is contrary to Article 1§2 of the Charter, on the grounds that they could lead to forms of forced labour.' *(Concl. XVI-1 vol. 1, 63-34)*

– 'The Committee takes note of the information contained in the *Netherlands* report.

Article 19 of the Netherlands Constitution provides that every citizen has the right to freely choose their occupation. As noted in the previous conclusion, in 1999, i.e. during the reference period, Section 6 of the 1945 Labour Relations (Special Powers) Extraordinary Decree was repealed by the Flexibility and Security Act. Employees no longer need resignation permission from the authorities. The situation in this respect has thus been brought into line with Article 1§2 of the Charter.' *(Concl. XVI-1 vol. 2, 438)*

– 'Prisoners working for private employers are divided into two groups: those who return to prison after work and who have to pay for board and lodging out of their wages, and those who are released under supervision. The latter are entitled to claim social assistance if the wage paid by the employer does not comply with the minimum standards.' *(Concl. XVII-1 vol. 1, m.b.t. Nederland, 139)*

Other aspects

– *'Loss of unemployment benefits for refusal to take up employment*

As noted in the previous conclusion, under social security legislation, in order to qualify for unemployment benefit, claimants are required to accept a suitable job, otherwise their benefits are liable to be suspended. An appeal may be lodged with the courts. The report states that suitable employment is defined according to the type of job previously held, the level of qualification, journey times, pay and the risk of the person concerned not finding a job. Level of qualification is fully taken into account only for the first six months of unemployment. After two years' unemployment, the person's qualifications and employment history are no longer taken into consideration.

Part-time work

The Committee recalls that states that have accepted Article 1§2 of the Charter undertake "to protect effectively the right of the worker to earn his living in an occupation freely entered upon". It is concerned about the impact of the development of part-time work on these two aspects of Article 1§2. It therefore asks for the next report to include information on the legal safeguards attached to part-time work, in particular whether there is a minimum working week and whether there are rules to avoid undeclared work in the context of overtime and ones requiring equal pay, in all its aspects, between part-time and full-time workers.

Pending receipt of the requested information, the Committee concludes that the situation in the *Netherlands* is in conformity with Article 1§2 of the Charter.' *(Concl. XVI-1 vol. 2, 438-439)*

– 'It emerges from the reply to a question asked in the previous conclusion that part-time work is governed by the provisions of the Civil Code, the Working Hours (Adjustment) Act and the Equal Treatment Act. *Dutch* law does not lay down any maximum working hours. The Civil Code stipulates that the working time of part-time workers is calculated on the basis of the average hours worked during the previous three months. Any working time over and above that aver-

age is regarded as overtime. With regard to remuneration and other benefits, the Committee notes that those of part-time workers are proportional to those of full-time workers in a comparable situation.

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 1§2 of the Charter.' *(Concl XVII-1 vol. 1, 139-140)*

JURISPRUDENTIE

– 'Art. 1 Europees Sociaal Handvest, art. 1 Verdrag van 9 juli 1964 betreffende de werkgelegenheidspolitiek en art. 6 Verdrag van New York inzake economische, sociale en culturele rechten leggen op de verdragsluitende staten zekere verplichtingen. Zij geven echter aan het individu geen "waarborg (...) voor het recht op vrije keuze van dienstbetrekking", zoals het onderdeel zegt (HR 17 oktober 1980, *NJ* 1981, 141.' *(Muhren/F.C. Twente)*

– 'Bij besluit van 22 okt. 1984 hebben verweerders afwijzend beschikt op het verzoek van appellant om vergunning voor het innemen van een permanente standplaats op het Wilhelmina-plantsoen in de gem. Diemen ten behoeve van de verkoop van groenten en fruit. (...) Het beroep op art. 1 tweede lid ESH en art. 6 eerste en tweede lid IVESC kan appellant evenmin baten, aangezien deze verdragsbepalingen slechts verplichtingen leggen op de verdragsluitende staten en niet zijn een ieder verbindende bepalingen als bedoeld in art. 94 Grondwet.' *(ARRvS 10 april 1986, AB 1986, 586)*

Aantekeningen lid 3

INTERNATIONALE CONTEXT

Internationale Arbeidsorganisatie

– Nr. 2 (Werkloosheid), *Stb.* 1932, 69 (met Nederlandse vertaling). Bekrachtigd op 6 februari 1932. Toepasselijkverklaring voor Nederlandse Antillen op 13 juli 1951. Van kracht voor Aruba vanaf 1 januari 1986. Zie *Trb.* 1957, 141.

Nr. 88 (Dienst voor de werkgelegenheid), *Stb.* J 547 (1949) (met Nederlandse vertaling). Bekrachtigd op 7 maart 1950, *Trb.* 1951, 28 en 147. Toepasselijkverklaring op Nederlandse Antillen op 25 juni 1951 (behalve de artikelen 4, 5, 6(*d*) en 8). Van kracht voor Aruba vanaf 1 januari 1986.

Nr. 181 (particuliere bureaus voor arbeidsbemiddeling), *Trb.* 1997, 308. Nederlandse vertaling *Trb.* 1998, 159. Bekrachtigd op 15 september 1999, *Trb.* 1999, 182.

TOELICHTING

Europees Comité voor Sociale Rechten

– 'The Committee interpreted this provision as placing an obligation on each Contracting State not only to create or maintain such services throughout its national territory but also to ensure that they were properly operated and, where necessary, supervised, in collaboration with both sides of industry.' *(Concl. I, 16)*

– 'The Committee wished to stress that the term "Free employment services", used in this paragraph, implied the free provision of placement services for both the worker and employer. This interpretation is borne out by the text of the paragraph under consideration and is moreover the obvious one if only to prevent an employer passing on any placement costs incurred by him to workers.' *(Concl. IV, 10)*

– '(...) The Committee recalled its case-law (Conclusion VIII, pp. 36-37), to the effect, firstly, that the principle of free employment services applied to employers and workers alike, secondly that the existence of fee-charging placement services was acceptable only if a free placement service were available in all sectors and, thirdly, that access to certain occupations of a high level of responsibility could justify payment by the employer for specific services of selection and thorough assessment, but only subject to certain precise limitations, namely:

'–. that services paid for concern specifically selection or assessment, but not registration of availability for employment, which must remain free;

– that posts justifying recourse to such additional services should be limited in number and correspond to a high level of qualification and responsibility (higher professional executives and managerial staff).' ' *(Concl. XII-1, m.b.t. Denemarken, 62)*

– 'Despite the on-going liberalisation process, the public employment services remain the dominant

providers of free services in all Contracting Parties. In order to verify that the requirements of Article 1 para. 3 are satisfied not only in legislation, but also in practice, the Committee has sought to determine the performance levels of the public agencies. The Committee is conscious of the methodological problems inherent in quantitative measurements of employment service results. Leaving aside the problems of statistical reliability, it is obvious that indicators such as the placement rate and the market share do not directly reflect the quality and the variety of services offered. The Committee nevertheless considers that these indicators are indispensable for assessing the actual situation in states, which makes the more regrettable the lack of basic information in certain national reports (conclusions were deferred for Belgium and Iceland for lack of information) on the number of placements made, vacancies notified and market shares. (...) Finally, the Committee puts great emphasis on the need for the participation of the social partners in the organisation and operation of employment services. It considers that organisations of workers and employers by their very nature possess a special knowledge of the supply and demand for labour and are ideally placed to identify the relevant service needs. The non-participation of the social partners would therefore render the provision of efficient placement services difficult in the least.' *(Concl. XIV-1 vol. 1, 40-41)*

– 'The *(Dutch, bew.)* report under this provision responds to the question posed previously by the Committee on the charging of fees for certain services of the Manpower Services. Fees may be charged to employers for services such as outplacement or intensive recruitment and selection activities. According to the report, this is to avoid unfair competition against private sector providers. Fees can only be charged with ministerial approval. The activities concerned must contribute to the objectives laid down in Section 3 of the Manpower Services' Act, 1996, which direct the Manpower Services to provide extra support to persons who have difficulty in entering the labour market. The main services (registration of vacancies, applications and placement) remain free of charge to both jobseekers and employers. The Committee considers that the situation is not incompatible with the Charter.' *(Concl XV-1 addendum, p. 83-84)*

– 'The Committee notes from the Dutch report that employment services underwent substantial changes in 2001. The Work and Income Act created 130 Centres for Work and Income (CWI's), which register and classify job-seekers using a newly developed tool called "Jobseeker Classification Instrument". The idea of the system is to classify job-seekers into four different groups, depending on their prospects of finding employment. The first group includes people classified as "immediately employable". Those who require a short vocational training (of up to 12 months) are registered within the second group and those who require longer training (between 12 and 24 months) are classified as group three. Finally, people with very poor perspectives of finding a job, those who require "social activation", constitute the fourth group. The responsibility of finding work for jobseekers classified in the first group lies within CWI's. Local authorities and Employee Insurance Schemes (UWV – the successor to the social security benefit agencies) are in charge of placement and reintegration of the rest of job-seekers. Since 2001, UWV and local authorities conclude contracts with private agencies providing reintegration programmes. (...)

It is the UWV and local authorities that are responsible for coordination of public and private free employment services. Public authorities are to apply transparent tendering procedure before concluding a contract with an agency. The agencies themselves must meet certain minimum requirements; they must for example, have complaints procedures and regulations protecting clients' privacy. There is no requirement of certification. (...)

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 1§3 of the Charter.' *(Concl. XVII-1 vol. 1, 140-141)*

Aantekeningen lid 4

INTERNATIONALE CONTEXT

Verenigde Naties

– Vgl. artikel 6 lid 2 IVESCR.

Internationale Arbeidsorganisatie

– Nr. 142 (Rol van beroepskeuzevoorlichting en beroepsopleiding bij de ontwikkeling van menselijke hulpbronnen), *Trb.* 1976, 140 (met Nederlandse vertaling). Bekrachtigd op 19 juni 1979, *Trb.* 1979, 126. Van kracht voor Aruba vanaf 1 januari 1986.

Nr. 159 (beroepsrevalidatie en werkgelegenheid van gehandicapten), *Trb.* 1984, 158 (met Nederlandse vertaling). Bekrachtigd op 15 februari 1988, *Trb.* 1988, 35.

TOELICHTING

Europees Comité voor Sociale Rechten

– 'Recognising that the obligations deriving from this provision are identical to those imposed by Articles 9, 10 and 15 of the Charter and that States which have accepted these three articles are not required to include in their two-yearly reports particulars concerning the application of the above clause, the Committee refers to the observations made further on regarding the three articles in question.' *(Concl. I, 16)*

– 'Nevertheless, the Committee desired to make clear that while this was possible because of the identity, broadly speaking, of the areas covered by this articles and by Article 1(4), the converse was not implied, viz. that a States which complied with the last-mentioned provision had necessarily fulfilled all the obligations set out in Article 9, 10 and 15 of the Charter.' *(Concl. II, 6)*

– '(...)The Committee specified that in order to satisfy the requirements of Article 1, para. 4, a state must not only have institutions providing vocational guidance, training and rehabilitation, but must also ensure acces to the institutions for all those interested, including foreigners, nationals of the states parties to the Charter, and the disabled.' *(Concl. XII-1, general observation, 67)*

– 'The Committee takes note of the information contained in the report under Article 1 para. 4, which demonstrates that the *Netherlands* continue to possess institutions providing vocational guidance, training and rehabilitation.' *(Concl. XIV-2 vol. 2, 531)*

– 'The Committee takes note of the information contained in the *Netherlands'* report and refers to its conclusions under Article 9 (right to vocational guidance), 10§3 (right to vocational training and retraining of workers), and 15§1 (right of persons with disabilities to guidance, education and vocational training), where it found the situation to be in conformity with the Charter.

The Committee concludes that the situation in the Netherlands is in conformity with Article 1§4 of the Charter.' *(Concl. XVI-2 vol.2, 513)*

Recht op billijke arbeidsvoorwaarden

Art. 2. Ten einde de onbelemmerde uitoefening van het recht op billijke arbeidsvoorwaarden te waarborgen verbinden de Overeenkomstsluitende Partijen zich:

1. redelijke dagelijkse en wekelijkse arbeidstijden vast te stellen, waarbij de werkweek geleidelijk dient te worden verkort voorzover de vermeerdering der produktiviteit en andere van invloed zijnde factoren zulks toelaten;

2. voor algemeen erkende feestdagen behoud van loon te waarborgen;

3. een jaarlijks verlof van ten minste twee weken met behoud van loon te waarborgen;

4. verdere vrije dagen met behoud van loon of een verkorting van de arbeidsduur te waarborgen voor werknemers die nader omschreven gevaarlijke of voor hun gezondheid schadelijke werkzaamheden verrichten;

5. een wekelijkse rusttijd te waarborgen, die zoveel mogelijk samenvalt met de dag die volgens traditie of gewoonte in het betrokken land of in de betrokken streek als rustdag wordt erkend.

The right to just conditions of work

Art. 2. With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

2. to provide for public holidays with pay;

3. to provide for a minimum of two weeks annual holiday with pay;

4. to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;

5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest.

Aantekeningen

ALGEMEEN

- Artikel 33 is van toepassing op alle leden van bovenstaand artikel.
- Vgl. het *herziene* ESH, waarin 2 nieuwe paragrafen zijn opgenomen.

Aantekeningen lid 1

ALGEMEEN

Nederlandse wetgeving

- Arbeidstijdenwet, wet van 23 november 1995, *Stb.* 1995, 598.

INTERNATIONALE CONTEXT

Europese Unie

- Richtlijn nr. 93/104/EEG (Organisatie arbeidstijden), geamendeerd door Richtlijn 2000/34/EG, artikel 3-6, 16.

Richtlijn nr. 99/63/EG (Arbeidstijden voor zeevarenden).

Richtlijn nr. 2000/79/EG (Arbeidstijden mobiel personeel in de burgerluchtvaart).

Verenigde Naties

- Vgl. artikel 7 sub *d* IVESCR.

Internationale Arbeidsorganisatie

- Nr. 180 (werktijden van zeevarenden en de bemanning van schepen), *Trb.* 1997, 219. Nederlandse vertaling in *Trb.* 1999, 23. Bekrachtigd voor Nederland op 16 juni 2003, *Trb.* 2003, 178.

TOELICHTING

Europees Comité voor Sociale Rechten

- 'Committee wished to make it clear that in view of the wording of this paragraph and of Article 33 of the Charter, a Contracting Party could not be considered as complying with the resulting obligation unless reasonable daily and weekly working hours were established in that country either by law or regulations or by collective agreement, or by some other process imposing an obligation whose performance is subject to the supervision of an appropriate authority.' *(Concl. I, 169)*
- 'The Committee recalls that the aim of Article 2 para. 1 is to "protect workers" health and safety of workers – hence their lives – without neglecting more general interests, particularly economic ones' (Third report on certain provisions of the Charter which have not been accepted, p. 11 *(zie artikel 22, bew.)*). In order to meet the requirements of Article 2 para. 1, Contracting Parties must set a reasonable length to daily and weekly working time through legislation or regulations, collective agreements or any other obligatory means involving supervision by an appropriate authority. In addition, again in the Third report on certain provisions of the Charter which have not been accepted, the Committee stated that working hours are assessed 'by taking into account not only normal working hours but also overtime, which should therefore also be regulated in the sense that it should not be left to the discretion of the employer or the worker; the utilisation and/or the length of overtime should be limited in order to avoid exposing the worker to the risks of accidents at the end of a working day.'

When examining national reports, the Committee cannot give an opinion in the abstract on which daily and weekly working hours are reasonable over a given period in time. It recalls that it has held that what is reasonable under the Charter varied from place to

place and from time to time. Moreover, the progressive reduction of working hours depends on 'the increase of productivity and other relevant factors'. Such other factors are the nature of the work, including the risks to which the workers' safety and health are exposed. As the Committee has pointed out on many occasions, risks are higher for workers occupied for long hours over a considerable period of time.

The Committee has nevertheless observed that some situations are 'unreasonable': in any circumstances, working hours should amount to less than sixteen hours per day and not exceed sixty hours per week in order to be considered reasonable under the Charter.

With respect to *Norway*, for example, the Committee considers that the possibility provided for in national legislation to agree locally on extended overtime work with a daily maximum of sixteen working hours in one single twenty-four hour period is not in conformity with the Charter. It considers that the conditions laid down in the relevant legislation are too general and notes that there is no limit as to the sectors in which these measures may be provided. This provision therefore appears to the Committee to be a risk to the health and safety of workers. It also finds that even if a reasonable limit is set to weekly working hours, this cannot compensate the fact that on a given day, hours may be above the authorised maximum.

In recent years, statutory provisions introducing or authorising the flexibility of working time entailing the averaging of working hours over periods of over a week have been adopted in many Contracting Parties. The Committee considers that these measures are not as such in breach of the Charter.

Assessment of the conformity of schemes for flexible working hours with Article 2 para. 1 will depend on a series of factors.

Firstly, the maximum daily and weekly limits referred to above must not be exceeded, in any event.

Moreover, a legal framework must lay down rules which serve as the basis for flexibility measures. If measures are introduced through collective agreements, the Committee ascertains at what level these agreements have been signed.

The Committee requires more safeguards if the flexible working hours have been agreed upon in collective agreements reached at the enterprise level.

In the *Netherlands*, for example, the flexibility system is organised does not afford sufficient protection to workers: 'flexibility regulations' may be introduced by an agreement at enterprise level, and the 'basic regulations' which also allow for adjustments of working time apply directly in the absence of a workers' representative body or of staff delegates within the enterprise or if the employer does not obtain an agreement. The Committee finds that in these circumstances, a total working week (usual hours plus overtime) which, within the framework of 'flexibility regulations' may attain up to sixty hours per week in cases defined too broadly in Section 5.9 of the Working Time Act, is unreasonable.

In *Belgium*, the 'limited flexibility' scheme does not offer sufficient guarantees to workers either, since in the absence of a collective agreement, enterprises may introduce flexibility by amending the working regulations, which in certain cases can be done without negotiations. Furthermore, even where flexibility is the result of an agreement, this may be negotiated at company level.

It also takes into account the reference periods for the averaging of working hours: periods that do not exceed four to six months are accepted, and periods of up to a maximum of one year may also be acceptable in exceptional circumstances.

For the purpose of protecting the private and family life of workers, the Committee attaches importance to the fact that they must be clearly and duly informed about any changes to their working hours.

The Committee examines the situation of workers 'on call' or working discontinuous hours under this provision. It also recalls that adequate protection must be afforded to part-time workers.

The role played by the Labour Inspection in supervising that regulations and agreements on working hours are observed is a factor taken into account by the Committee in its assessment of whether a given country's system for flexible working hours is acceptable for the purposes of Article 2 para. 1 of the Charter.' *(Concl. XIV-2 vol. 1, 32-34)*

– 'The Committee takes note of the information contained in the *Dutch* report. (...) The Committee notes that the regulations allowing for working time flexibility described above have a precise normative framework and that the new legislation does aim to protect the safety and health of workers. It observes

that the way the flexibility system is organised does not afford sufficient protection to workers: on the one hand, unless the relevant collective agreement contains provisions on the length of working time 'flexibility regulations' may be introduced by an agreement at enterprise level, and, on the other hand, the 'basic regulations' which also allow for adjustments of working time apply directly in the absence of a workers' representative body or of staff delegates within the enterprise or if the employer does not obtain an agreement. The Committee finds that in these circumstances a total working week (usual hours plus overtime) which within the framework of 'flexibility regulations' may attain up to sixty hours per week is unreasonable.

There is no need to establish the number of workers concerned in so far as Article 33 does not apply in this case. The criticised provisions are generally applicable and may affect all workers.

The Committee concludes that the situation does not comply with Article 2 para. 1, as the provisions regulating the introduction of adjustment of working time do not contain sufficient guarantees for collective bargaining in order to protect workers, and that, as a result, the maximum working hours provided in the framework of 'flexibility regulations' are unreasonable.' *(Concl. XIV-2 vol. 2, 533-536)*

– 'The Committee notes from the Dutch report that there have been no changes during the reference period as regards statutory provisions on daily and weekly working time. It reiterates that the provisions of the Working Hours Act on the so-called "flexibility regulations" do not contain sufficient guarantees for collective bargaining in order to protect workers. The Committee takes note of the detailed information on average working hours in practice. Average working hours, including overtime, of full-time workers was 39,2 hours per week in 1999 and average hours, including overtime, of all workers was 31,3 hours in 2000 compared to 31,7 hours in 1997. As regards working time fixed by collective agreement the average was 37,3 hours per week in 1997 and 37,1 hours in 1998.

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§1 of the Charter as the "flexibility regulations" of the Working Hours Act do not contain sufficient guarantees for collective bargaining in order to protect workers.' *(Concl. XVI-2 vol. 2, 514)*

Aantekeningen lid 2

ALGEMEEN

– Artikel 33 is van toepassing.

INTERNATIONALE CONTEXT

Verenigde Naties

– Vgl. artikel 7 sub *d* IVESCR.

PARLEMENTAIRE BEHANDELING

– 'Een speciale wettelijke regeling op het stuk van de betaling van feestdagen bestaat in Nederland niet, doch omdat in de overgrote meerderheid van de gevallen de lonen van de werkenden op week- en maandsalaris zijn vastgesteld, is de doorbteling van loon tijdens feestdagen, waarop niet gewerkt wordt, gegarandeerd. Allerwegen wordt in de collectieve arbeidsovereenkomst het recht geregeld op verlof met behoud van loon op algeme feestdagen.' *(MvT, 8606, R 533)*

TOELICHTING

Europees Comité voor Sociale Rechten

– 'Collective agreements in the Netherlands guarantee employees six "Christian feast days". At local level, employees and employer may mutually agree that other local or protestant feast days are to be holidays. Employees not covered by collective agreements are, in principle, entitled to the customary local holidays.

The Netherlands Trade Union Confederation (FNV) sent comments to the Committee, saying that there was no statutory provision for public holidays, which were nevertheless, in principle, guaranteed under collective agreements. The Committee points out that public holidays may be laid down in legislation or established by practice on the basis of customs and collective agreements, so the situation did not give rise to a problem of conformity with Article 2 para. 2

of the Charter *(men zij gewezen op de toepasselijkheid van artikel 33, bew.).*

The Committee also notes that part-time employees receive equal treatment, proportionate to the number of hours worked, with full-time workers in respect of entitlement to public holidays with pay (Article 634 of the Civil Code).' *(Concl. XIV-2 vol. 2, 536)*

– 'The Committee therefore concludes that the situation in the Netherlands is in conformity with Article 2§2 of the Charter.' *(Concl. XVI-2 vol.2, 514)*

Aantekeningen lid 3

ALGEMEEN

– Artikel 33 is van toepassing.

– Vgl. artikel 2 lid 3 van het *herziene* ESH, waarin de minimale periode van vakantie is uitgebreid tot 4 weken.

NEDERLANDSE WETGEVING

– Burgelijk Wetboek, artikel 7:634-645.

INTERNATIONALE CONTEXT

Europese Unie

– Richtlijn nr. 93/104/EG (Organisatie arbeidstijden), artikel 7.

Verenigde Naties

– Vgl. artikel 7 sub *d* IVESCR.

Internationale Arbeidsorganisatie

– Nr. 132 (jaarlijkse vakantie met behoud van loon), *Trb.* 1971, 91. Nederlandse vertaling gewijzigd in *Trb.* 1997, 198. Niet bekrachtigd.

PARLEMENTAIRE BEHANDELING

– 'Overigens worden ten aanzien van het in dit lid gewaarborgde recht in collectieve arbeidsovereenkomsten voorzieningen getroffen.' *(MvT, 8606, R 533)*

TOELICHTING

Europees Comité voor Sociale Rechten

– 'The Committee recognised that exercise of the right safeguarded by Article 2(3) might sometimes be affected by the procedure whereby sick leave was taken into consideration when a worker fell ill during his annual holiday (Concl. I, 20). The Committee interpreted the provisions of this paragraph as laying down the principle that workers must not be able to waive their right to annual holidays, even in consideration of an extra payment by the employer. The Committee considered that the need to protect the workers as fully as possible made such a waiver incompatible with the Charter, even with the free consent of the workers concerned. The Committee recognised, however, that the principle of a lump-sum to an employee in compensation for the paid holiday to which he was entitled but which he had not taken.' *(Concl. I, 170)*

– 'The Committee notes from the *Dutch* report that the legislation on annual holidays was amended outside the reference period (in 2001). It asks that the next report contain full details on the new legislation. Having noted observations submitted by the Netherlands' Trade Union Confederation (FNV) that Section 640§2 of Book 7 of the Civil Code permits workers to forgo the minimum annual holiday under certain circumstances, the Committee asks to receive the Government's comments in this respect. It recalls that this provision of the Charter does not permit the waiving of the annual leave, even with the consent of the worker. Pending receipt of the information requested, it concludes that the situation in the Netherlands is in conformity with Article 2§3 of the Charter.' *(Concl. XVI-2 vol. 2, 515)*

Regeringscomité

– 'The Committee noted that the letter of the provision does not expressly forbid a worker to give up his leave entitlement in return for compensation. However, it is necessary to take into account the Universal Declaration of Human Rights, which recognises the right to a holiday as a fundamental and "inalienable" freedom of the individual and International Labour Convention Nr. 132 which expressly forbids

such a waiver of the leave entitlement. The Committee was therefore of the opinion that this provision of the Charter ought to be interpreted as not allowing the renunciation of holiday in exchange for extra pay, except when a worker cannot take the holidays to which he is entiteld such as in cases of termination of employment, sickness, etc.' *(4e Rap, 6)*

Aantekeningen lid 4

ALGEMEEN

- Artikel 33 is van toepassing.
- Vgl. artikel 2 lid 4 van het *herziene* ESH, waarin meer nadruk komt te liggen op de eliminatie of terugdringing van de risico's.

INTERNATIONALE CONTEXT

Verenigde Naties

- Vgl. artikel 7 sub *d* IVESCR.

Europese Unie

- Richtlijn nr. 93/104/EEG (Organisatie arbeidstijden), geamendeerd door Richtlijn nr. 2000/34/EG, artikel 8, 16.

Richtlijn nr. 99/63/EG (arbeidstijden voor zeevarenden)

TOELICHTING

Europees Comité voor Sociale Rechten

- '(...)the Committee observed that the term 'as prescribed' did, admittedly, leave the national legislature a certain latitude in the choice of occupations to be classed as dangerous or unhealthy. This choice is still subject to review by the Committee, and were it not to include occupations which were dangerous or unhealthy, the latter might conclude that the Charter had been violated (Concl. II, 9). The Committee emphasized the close link between the provisions of this paragraph and those of Article 3 of the Charter. Each of these parts should therefore be considered in connection with each other. It is the issue of safety and health regulations as provided under Article 3 and the supervision of their application and effectiveness which made it possible to identify better the measures taken to protect workers employed in dangerous or unhealthy occupations by providing reduced working hours or additional holiday with pay as stipulated by Article 2, paragraph 4.' *(Concl. IV, 18)*

- 'The Committee noted that the *Netherlands'* report continued to emphasise a policy of "prevention" rather than one of reduction in working time for workers employed in dangerous or unhealthy occupations. While acknowledging that preventative measures are vital to the issue of health and safety of working methods, the Committee could not accept the Netherlands' assertion that a reduction in working time was, in its view, no longer necessary to protect workers employed in dangerous or unhealthy occupations, as such a reduction in working time is the requirement of Article 2 para. 4 of the Charter, to protect the health of persons who are employed in dangerous or hazardous occupational activities such as mining and steelmaking. The Committee reaffirmed that, while the elimination of all risks in the workplace was an appropriate objective, as long as any risk continues, a reduction of working hours as required by this provision of the Charter is an essential factor in reducing stress\fatigue related accidents and illnesses.' *(Concl. XIII-1, 79-80)*
- 'In the view of the *Netherlands* authorities, reduced working hours or additional holidays, as required under Article 2 para. 4, are not likely to reduce the effects on workers' health of exposure to risk situations. The only appropriate solution, in their opinion, is a reduction in the period of exposure. (...) The Committee points out that, while the elimination of all workplace risks is the ultimate objective, until such time as that is achieved, reduced working hours or additional holidays, as required under Article 2 para. 4 of the Charter, are vital to reducing the number of work-related accidents and diseases.' *(Concl. XIV-2 vol. 2, 538)*
- 'The Committee notes from the *Dutch* report that there have been no new developments as regards reduced working hours or additional holidays in dangerous and unhealthy occupations. The Government restates its view that existing legislation protects workers to such an extent that rules on reduced working hours or additional holidays are not necessary. It considers this view to be borne out by the fact

that the wording of Article 2§4 was amended in the Revised European Social Charter. The Committee recalls that the Netherlands is a Contracting Party to the 1961 Charter and it can only reiterate that as long as risks remain in certain occupations, the obligation imposed by Article 2§4 retains its urgency. It therefore again asks the Government to ensure protection of the workers concerned by the measures foreseen by this provision of the Charter. The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§4 as there is no provision for reduced working hours or additional paid holidays in dangerous and unhealthy occupations.' *(Concl. XVI-2 vol. 2, 515)*

Regeringscomité

- 'The Committee wishes to repeat here the opinions previously expressed in its fourth and sixth reports, namely that, rather than reduce working hours or grant additional leave, governments should concentrate on making working conditions safer and more health. If working hours are not unduly long and efforts to reduce hazards and harmful effects are achieving noticeable results, there is no visible need to continue taking action on the length of working hours for occupations which will have ceased to be dangerous or unhealthy.' *(7e Rap, 6)*
- 'The Committee pointed out that it had considered that updating this provision would be useful. It took the view that in sectors where dangerous or unhealthy occupations still existed governments should adopt measures with a view to reducing working hours or increasing the length of holidays. It stressed the necessity that information on these sectors be sent to the Committee of Independent Experts, so that they could assess the situation (13e Rap (I), 44).

The Austrian and Polish representatives thought that for the sake of workers' health, it was preferable to try to restrict dangerous activities. They called on the Committee of Independent Experts to adopt a more dynamice interpretation of this provision and hoped that this issue would be discussed at the joint meeting.

The Committee agreed to this proposal.' *(14e Rap (II), 206)*

Aantekeningen lid 5

ALGEMEEN

- Artikel 33 is van toepassing.

Nederlandse wetgeving

- Arbeidstijdenwet, wet van 23 november 1995, *Stb.* 1995, 598.

INTERNATIONALE CONTEXT

Europese Unie

- Richtlijn nr. 93/104/EEG (Organisatie arbeidstijden), geamendeerd door Richtlijn nr. 2000/34/EG, artikel 5.

Verenigde Naties

- Vgl. artikel 7 sub *d* IVESCR.

Internationale Arbeidsorganisatie

- Nr. 14 (wekelijkse rustdag in de industrie), *Stb.* 1926, 184. Nederlandse vertaling *Trb.* 1957, 151. Bekrachtigd mede voor de Nederlandse Antillen en Aruba op 14 juli 1965, *Trb.* 1965, 174.

Nr. 106 (wekelijkse rustdag in de handel op kantoren), *Trb.* 1962, 40. Nederlandse vertaling *Trb.* 1964, 61. Bekrachtigd mede voor de Nederlandse Antillen en Aruba op 8 oktober 1971, *Trb.* 1971, 197. Opgezegd voor Nederland en Aruba op 2 maart 2000, welke inging op 2 maart 2001 (zie artikel 16 lid 1 van deze Conventie). Aangezien geen goedkeuring verkregen is van de Eerste Kamer, is het verdrag wederom bekrachtigd op 2 mei 2001, *Trb.* 2001, 95, waarna het ingevolge artikel 15 lid 3 van deze Conventie op 2 mei 2002 in werking is getreden.

TOELICHTING

Europees Comité voor Sociale Rechten

- 'Article 2 guarantees the right to three types of leave, public holidays with pay (paragraph 2) annual paid holidays (paragraph 3) and a weekly rest period

(paragraph 5). During the previous supervision cycle, the Committee observed that the flexibility of working time has consequences for all these principles, and in particular for the right to a weekly rest period. During the examination of the different national situations, the Committee has been prompted to recall the aim of Article 2 para. 5, which is to protect the health and safety of workers by guaranteeing a weekly rest period which corresponds as far as possible with the day of the week recognised as a rest day by tradition or custom (Sunday in all the Contracting Parties to the Charter). The Committee has also stated that this provision allows for the rest to be taken on a day other than Sunday, where the type of activity so requires or for reasons of an economic nature. The Committee insists on the fact that at all events, another day of rest during the week must be provided for.

Moreover, the Committee has noted that in some Contracting Parties, legislation or collective agreements may in certain cases provide for the postponement of weekly rest periods. In Sweden, for instance, collective agreements signed or approved by a trade union confederation may provide derogations from the rule stipulating that weekly rest periods must be taken in the course of each seven-day period of work. The Committee has made clear that the possibility for those concerned to waive their right to weekly rest periods is not in compliance with the Charter. However, it considered in the latter case, where weekly rest is postponed, that the situation is not in breach of the Charter, as two days' rest are provided for following twelve consecutive days' work. The Committee has nevertheless observed that twelve consecutive working days before a rest period is a maximum.' *(Concl. XIV-2 vol. 1, 34-35)*

– 'The Committee notes from the *Dutch* report that there have been no new developments during the reference period as regards the weekly rest period. The report confirms that under the Working Hours Act, Sunday work is at the outset prohibited. (...) The Committee notes that about 16% of the labour force works regularly on Sundays whereas about 73 % never works on a Sunday. Sunday work is most widespread in agriculture and in the fishing sector where 39 % of the labour force do it regularly. The Committee concludes that the situation in the Netherlands is in conformity with Article 2§5 of the Charter.' *(Concl. XVI-2 vol. 2, 538)*

Recht op veilige en hygiënische arbeidsomstandigheden

Art. 3. Ten einde de onbelemmerde uitoefening van het recht op veilige en hygiënische arbeidsomstandigheden te waarborgen, verbinden de Overeenkomstsluitende Partijen zich:

1. voorschriften inzake veiligheid en hygiëne uit te vaardigen;

2. voor de naleving van dergelijke voorschriften door middel van controlemaatregelen zorg te dragen;

3. zo nodig overleg te plegen met organisaties van werkgevers en werknemers omtrent maatregelen, bedoeld om de bedrijfsveiligheid en -hygiëne te verhogen.

The right to safe and healthy working conditions

Art. 3. With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:

1. to issue safety and health regulations;

2. to provide for the enforcement of such regulations by measures of supervision;

3. to consult, as appropriate, employers' and workers' organisations on measures intended to improve industrial safety and health.

Aantekeningen

ALGEMEEN

– Vgl. artikel 3 van het *herziene* ESH, waarin een nieuwe paragraaf 1 en 4 zijn toegevoegd.

TOELICHTING

Europees Comité voor Sociale Rechten

– 'The Committee regarded this Article as establishing a widely recognised principle, stemming directly from the right to personal integrity, one of the fundamental principles of human rights. Considerable attention has been given in the Charter to the ap-

plication of this principle: Indeed two more articles (Articles 7 and 8) have been devoted to the protection of young persons and women. The second of the three paragraphs comprising Article 3 had, in the opinion of the Committee, a particular importance since it establishes the need to provide for a system of labour inspection to safeguard the implementation of the rights to safe and healthy working conditions in practice. The Committee considered that a country which has accepted this article can only be regarded as fulfilling the undertaking deriving from it if it can prove that safety and health regulations have been issued for all economic sectors, that such regulations are adequately enforced through inspection and civil and criminal sanctions, and finally that any necessary consultations on safety and health matters between Governments and both sides of industry are arranged and actually take place.' *(Concl. I, 22)*

– 'It restated its view that this article, being designed to guarantee the right to safe and healthy working conditions not only for employed persons but also for the self-employed, ought to apply to ALL sectors of the economy if only on account of the technical advances and increasing mechanisation manifest in every branch of activity.' *(Concl. II, 12)*

– 'This interpretation is all the more inescapable because discrimination between employed and self-employed workers as regards safety and health at work would hardly be compatible with current concern to ensure a satisfactory working environment for all workers, especially where employed and self-employed workers were employed on the same work. However, the Committee emphasised that the fact that this article applies to all workers, employed or otherwise, does not mean that the same regulations, supervision machinery, etc should be applied in all cases.' *(Concl. III, 17)*

– 'The field of application of Article 3 is more limited than that of *Article 11*, which is designed to ensure the protection of health in general: the former refers specifically to industrial health, although the distinction between the working environment and living environment has now become a matter for debate – as, for example, when considering the consequences for those living in the neighbourhood of industrial accidents occurring in certain sectors of industry. The Charter has made the distinction, however, and when the committee evaluates the application of Article 3 it

can do so only in those terms. Apart, of course, from industrial accidents, the Article's scope cannot be confined to such hazards to health as national legislations recognise as occupational diseases since there is often a gap between the time at which a new disease appears in the working environment and that at which it is recognised by the law as occupational in character. The special feature of the field of article 3 has to do with the appearance of new risks, eg from the new chemical products which are coming into use by the hundreds in industry and agriculture and which present dangers to worker's health and welfare, but often reveal themselves only after a certain period of latency.' *(Concl. V, XVIII)*

– 'The Committee has stressed the existing relation between safety and health at work "stricto sensu" and living conditions in general and was pleased to note that in some countries legislation has been introduced taking into account both aspects. Thus, on the one hand, the employer's responsibility both for safety and health within the place of work and the environment outside has been extended, and, on the other, worker's co-operation in all matters connected with improving these conditions has been increased. The merit of such legislation is that it offers protection to a larger section of the community since it takes into account both the overall impact on health, of working conditions and the consequences of industrial activity on the environment in general. In this sense it should be underlined that though the committee is bound in any event to examine Articles 3 and 11 of the Charter separately in view of their different content, the matters contemplated under these provision could only be considered in relation to the common aim pursued, namely, the protection of the quality of life.' *(Concl. VI, XIII)*

JURISPRUDENTIE

– Artikel 3 (net als artikel 11) heeft geen rechtstreekse werking en kan dus niet baten voor – in casu asbestslachtoffers: 'Op grond van de tekst van art. 3:310 BW en de wetsgeschiedenis moet worden aangenomen dat als gebeurtenis die de verjaring doet aanvangen heeft te gelden de gedraging – handelen of nalaten – van de aansprakelijke persoon, die tot de schade kan leiden, ook al is het vooralsnog onzeker of inderdaad schade een gevolg ervan zal zijn en al heeft

de schade, indien zij zich voordoet, zich pas later gemanifesteerd. In het onderhavige geval moet dus als gebeurtenis worden aangemerkt de blootstelling aan asbest, dat wil in verband met het derde lid van art. 3:310 zeggen het einde van die blootstelling. (...) Het betoog van het onderdeel dat de Rechtbank op grond van de artikelen 3 en 11 ESH en/of art. 7 Internationaal Verdrag inzake economische, sociale en culturele rechten, gelet op art. 94 Gr.w ambtshalve art. 3:310 buiten toepassing had moeten laten, faalt, aangezien voormelde verdragsbepalingen geen rechtstreekse werking hebben.' *(HR 28 april 2000, NJ 2000, 430, JOR 2000/163, JAR 2000/122, Erven Van Hese/De Schelde)*

Zie ook HR 20 oktober 2000, *NJ* 2001, 268, *JAR* 2000/237.

Aantekeningen lid 1

ALGEMEEN

Nederlandse wetgeving

- Arbeidsomstandighedenwet 1998, wet van 18 maart 1999, *Stb.* 1999, 184.

Arbeidsomstandighedenbesluit, besluit van 15 januari 1997, *Stb.* 1997, 217.

INTERNATIONALE CONTEXT

Europese Unie

- Richtlijn nr. 96/29/Euratom (Ioniserende straling)

Kaderrichtlijn nr. 80/1107/EEG en 89/391/EEG (veiligheid en gezondheid)

Specifieke richtlijnen:

- veiligheidssignalering (77/576/EEG, 79/640/EEG)
- vinylchloridemonomeen (78/610/EEG)
- chemische, fysische en biologische agentia (80/1107/EEG, 88/642/EEG en 91/322/EEG inzake grenswaarden)
- zware ongevallen (82/501/EEG en 87/216/EEG)
- metallisch lood (82/605/EEG)
- asbest (83/477/EEG), geamendeerd door (91/382/EEG)
- lawaai (86/188/EEG)
- arbeidsplaatsen (89/654/EEG)

- arbeidsmiddelen (89/655/EEG)
- manuele lasten (90/269/EEG)
- beeldschermen (90/270/EEG)
- carcinogene agentia (90/394/EEG)
- biologische agentia (90/679/EEG)
- tijdelijke en uitzendbetrekkingen (91/383/EEG)
- tijdelijke en mobiele bouwplaatsen (92/57/EEG)
- veiligheids- en gezondheidssignalering (92/58/EEG)
- winningsindustrieën (92/91/EEG boringen en 92/104/EEG dagbouw of ondergronds)
- vissersvaartuigen (93/103/EEG).

Verenigde Naties

- Vgl. artikel 7 sub *b* IVESCR.

Internationale Arbeidsorganisatie

- Nr. 13 (Gebruik van lood wit in verfstoffen), *Stb.* J 59 (met Nederlandse vertaling). Bekrachtigd op 15 december 1939, *Trb.* 1957, 150.

Nr. 115 (beveiliging van werknemers tegen ioniserende straling), *Trb.* 1962, 45. Nederlandse vertaling in *Trb.* 1966, 172. Bekrachtigd op 29 november 1966, *Trb.* 1967, 4.

Nr. 152 (Arbeidsveiligheid en gezondheid in havenarbeid), *Trb.* 1980, 107 (met Nederlandse vertaling). Bekrachtigd op 13 mei 1998, *Trb.* 1998, 197.

Nr. 155 (Beroepsveiligheid, gezondheid en arbeidsmilieu), *Trb.* 1981, 243. Nederlandse vertaling in *Trb.* 1982, 100. Bekrachtigd op 22 mei 1991, *Trb.* 1991, 165.

Nr. 162 (Veiligheid bij het gebruik van asbest), *Trb.* 1987, 87. Nederlandse vertaling in *Trb.* 1988, 110. Goedkeuringswet van 27 maart 1999, *Stb.* 1999, 186. Bekrachtigd op 15 september 1999.

Nr. 174 (Voorkoming van grote industriële ongevallen), *Trb.* 1993, 161. Nederlandse vertaling in *Trb.* 1996, 185. Bekrachtigd op 25 maart 1997, *Trb.* 1997, 216.

Nr. 177 (Thuiswerk), *Trb.* 1996, 329. Nederlandse vertaling in *Trb.* 2001, 25. Bekrachtigd op 31 oktober 2002, *Trb.* 2003, 176.

TOELICHTING

Europees Comité voor Sociale Rechten

– 'Article 3 para. 1 requires the Contracting Parties to issue regulations on health and safety at work. In order to be in conformity with the Charter, the regulations in force should meet requirements as to their content and personal scope. The regulations should provide for preventive and protective measures against most of the risks provided in the international technical reference standards. The Committee observes that generally speaking, the legislative and regulatory measures relating to industrial health and safety in the Contracting Parties are organised as follows:

Framework legislation on health and safety at work which imposes general obligations on employers and on workers. All Contracting Parties, members of the European Union or parties to the Agreement on the European Economic Area have adopted this type of legislation, in some cases following the incorporation during the reference period of Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work;

Regulations providing for specific measures in accordance with the risks and hazards connected with:

- the establishment of, alteration to and upkeep of workplaces;
- work equipment;
- hazardous agents and substances;
- certain sectors and activities;
- certain vulnerable categories of workers,
- the organisation of work.

The first stage in supervision of the conformity of the content of regulations consists in defining the risks that should be regulated. During the first supervision cycles, the Committee referred in various separate cases to the numerous ILO Conventions and recently to several Community Directives on health and safety at work.

The Committee observes that since the last cycle during which it examined Article 3 for all the Contracting Parties (Conclusions XIII-1, reference period 1990-1992), Community legislation on safety and health has been developed substantially and now covers most areas of workers' health and safety (following the introduction of Article 118A and the adoption of the Charter of Fundamental Social Rights of Workers). It considers that reference to Community law is now necessary in this field, in particular in the light of Directive 89/391/EEC which establishes the framework and principles of the protection of workers' health and safety and serves as a basis for a large number of more specific directives.

Consequently, the Committee has at its disposal a very complete set of international technical reference standards which can be of use for defining and listing the main risks and occupations concerning which regulations should provide for protection and prevention measures in order to comply with Article 3 para. 1 of the Charter. Aware of the particularly changing nature in this field with the progress made in technology, ergonomics and medicine, the Committee will explain the new areas to which it will turn its attention each time it examines Article 3.

Currently, the areas in which supervision is conducted are the following:

Establishment, alterations and upkeep of workplaces – Work equipment

* Workplaces and equipment, in particular the protection of machines, manual handling of loads, work with display screen equipment
* Hygiene (Commerce and Offices)
* Maximum Weight
* Air Pollution, Noise and Vibration
* Personal protective equipment
* Safety and/or health signs at work.

Hazardous agents and substances

* Chemical, physical and biological agents in particular carcinogens, including: white lead (painting), benzene, asbestos, vinyl chloride monomer, metallic lead and its ionic compounds, ionizing radiation;
* Control of major accident hazards involving dangerous substances

Risks connected with certain sectors or activities

* Marking of weight (packages transported by vessels)
* Protection of dockers against accidents
* Dock Work
* Building Safety Provisions, temporary or mobile construction sites
* Mines, mineral through drilling and underground mineral extracting industries
* Ships and fishing vessels

* Prevention of Major Industrial Accidents

Risks connected with certain vulnerable categories of workers

The protection of health and safety for certain categories of workers calls for special provisions:

- The Committee notes that there have been substantial changes in the characteristics of the active population over the past years, and in particular an increased use of insecure types of employment (temporary and fixed-term employment and self-employment). It observes that these workers are more subject to a combination of risks in terms of health and safety, related both to the nature of the work they are asked to perform (often in the building and industrial sectors) and to their statute.

This explains why the Committee decided to pay attention to the situation of workers in insecure employment or working under fixed-term contracts. It therefore asks those Contracting Parties bound by Article 3 whether appropriate rules have been laid down to take account of the specific nature of these types of employment relationship, in order to ensure that the workers concerned enjoy the same level of health protection at work as other workers in the undertaking. For example, the Committee will take into account the existence of a list of occupations in which these workers may not be employed, and of provisions providing for special information, training and medical surveillance.

It notes that these forms of work are the subject of prescriptions at Community law level, in Directive 91/383 which supplements the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.

- Article 7 of the Charter contains provisions for specific measures to be taken in relation to children and young persons (...). The Committee considers that control of the compliance with these prescriptions falls within the remit of Article 7;

- Article 8 para. 4 of the Charter provides for regulation of the employment of women workers on night work in industrial employment (Article 8 para. 4*a*) and for the prohibition of all employment of women workers in underground mining work and as appropriate of all other work unsuitable for them by reason of its dangerous, unhealthy or arduous nature (Article 8 para. 4*b*). For several cycles the Committee has focused on situations connected with maternity. It found the expression 'as appropriate' used in Article 8 para. 4*b* permitted states to limit the prohibition of employment of women in the above-mentioned occupations to the sole cases where this was necessary to protect motherhood, notably pregnancy, confinement and the post-natal period, as well as future children (Conclusions X-2, pp. 97 and 98). The Committee thus examines the special protection which must be afforded to women and especially pregnant women, those having recently given birth or who are breastfeeding in the context of Article 8 para. 4.

Risks connected with the organisation of work.

These include prescriptions on working hours, weekly rest periods, paid leave, etc, covered as such by Article 2, of which the aim is to protect the health and safety of workers, similarly to Article 3. Article 2 para. 4 contains a specific requirement in relation to the organisation of working time in dangerous or unhealthy occupations. Supervision of the effects of the adjustment of working time, and in particular its development (flexibility measures) on health and safety at work, are therefore part of the assessment of conformity with Article 2. This supervision will be extended to cover night work in the framework of the revised Charter (Article 2 para. 7).

Regulations should provide for preventive and protective measures without any major gap

The Committee considers that the extent, technical nature and development of prescriptions prevent it from monitoring the situation in a detailed and thorough fashion. It thus proceeds to its assessment in the following manner:

- it firstly makes a global appraisal of the level of protection offered in order to assess whether there are any major loopholes. Appraisal is not only based on information included in the report but also on the observations of the ILO Committee of Experts on the application of the many ILO conventions in the field and on the information about the incorporation of Community directives into the domestic law of the Contracting Parties which are members of the European Union and parties to the Agreement on the European Economic Area. The Committee considers that significant criteria for assessment are: the scope of employers' general requirements and in particular those related to risk management; the order of importance of the main means of protection and pre-

vention, and the trends in the area of industrial accidents and occupational disease examined under Article 3 para. 2;

– it also makes an assessment by subject, determining more precisely the actual means of prevention and protection needed against certain risks, again with reference to international technical standards. Assessment of these risks plays a significant part in the global examination of levels of protection.

It asked general questions in Conclusions XIII-4 on protection against hazards related to asbestos and ionizing radiation:

Protection against asbestos

International technical reference standards are ILO Convention Nr. 162 of 1986 on asbestos (ratified by seven Contracting Parties to the Charter) and Community Directive 83/477 on the protection of workers from the risks related to exposure to asbestos at work, amended by Directive 91/382. The Committee also notes that the Parliamentary Assembly of the Council of Europe adopted a recommendation on the dangers of asbestos for workers and the environment (Recommendation Nr. 1369 (1998).

The Committee concentrated its examination on the following measures:

Threshold levels for exposure. The Committee considers that in order to comply with Article 3 para. 1, limits to exposure should be at least equal to or lower than the limits set out in the Directive. In this respect it observes that during the reference period, this was in fact the case in all the member states of the European Union except Greece.

Measures of prohibition. The Committee holds that the total prohibition of asbestos is a measure which will ensure that the right provided under Article 3 para. 1 of the Charter is more effectively guaranteed. It notes from the information at its disposal that France, the Netherlands, Italy, Denmark, the United Kingdom, Germany, Finland and Sweden have taken measures of general prohibition of asbestos. These measures are very different, varying according to the scope of the ban (use, handling, import, export, sale and manufacture), the exceptions allowed and the type of fibres prohibited.

Protection against ionising radiation

The Committee considers that effective protection against the risks related to ionising radiation requires that the maximum levels prescribed in 1990 by the International Commission on protection against radiation be respected and invites Parties which are members of the European Union and parties to the Agreement on the European Economic Area that have not yet adjusted their legislation according to these levels to do so in the framework of Directive 96/29/Euratom.

The Committees points out that Article 3 of the revised Charter contains a requirement of coherent risk prevention policy, such as reducing to the minimum the causes of risks inherent in the working environment and providing for the institution of health services at work for all workers. This will enable the Committee to focus on such prevention factors as the training and informing of workers, the medical supervision of workers and the organisation of that supervision, etc.

All workers, regardless of their category and the sector of activity in which they are occupied, must be protected

As Article 33 does not apply, this aspect of Article 3 has always been systematically monitored by the Committee and has led to negative conclusions in certain cases, generally connected with a lack of adequate protection for the self-employed. The Committee recalls that it has recognised that, "given the difference in the conditions in which an employee and a self-employed worker carry out their activities, there may, to a certain extent, have to be different rules for applying safety and health requirements. However, the objective of providing a safe and healthy working environment must be the same for both employed and self-employed workers, and the regulations and their enforcement must be adequate and suitable in view of the work being done" (inter alia, Conclusions XIII-4, p. 342).' *(Concl. XIV-2 vol.1, 36-43)*

– 'The Committee examined the general scope of the regulations in Conclusions XIV-2 (pp. 540 to 542). The report contains the information requested on the content of preventive and protective measures in *Dutch* regulations:

Protection against dangerous agents and substances

– Protection of workers against asbestos.

The Committee took note in its previous conclusion of the general ban adopted in the Netherlands concerning: production, import, use, supply and sale of asbestos and any product containing it, including recycling of asbestoscontaining waste (Decree Nr. 60 of 1997 and Order Nr. 63 of 1997). In the event of expo-